

**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**In the Matter of the Accusation Against:** )

)

)

)

**MARK CHRISTOPHER DOWLING, M.D.** )

**Case No. 02-2012-228401**

)

**Physician's and Surgeon's** )

**Certificate No. G80355** )

)

**Respondent** )

)

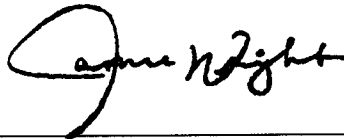
**DECISION**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on May 8, 2015.

IT IS SO ORDERED: April 10, 2015.

**MEDICAL BOARD OF CALIFORNIA**



\_\_\_\_\_  
Jamie Wright, J.D., Chair  
Panel A

1 KAMALA D. HARRIS  
Attorney General of California  
2 E. A. JONES III  
Supervising Deputy Attorney General  
3 VLADIMIR SHALKEVICH  
Deputy Attorney General  
4 State Bar No. 173955  
California Department of Justice  
5 300 So. Spring Street, Suite 1702  
Los Angeles, CA 90013  
6 Telephone: (213) 897-2148  
Facsimile: (213) 897-9395  
7 *Attorneys for Complainant*

8 **BEFORE THE**  
9 **MEDICAL BOARD OF CALIFORNIA**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 02-2012-228401

13 **MARK CHRISTOPHER DOWLING, M.D.**  
1000 Greenley Rd.  
Sonora, CA 95370

OAH No. 2014120028

14 **STIPULATED SETTLEMENT AND**  
15 **DISCIPLINARY ORDER**

16 **Physician's and Surgeon's Certificate No.**  
17 **G80355**

18 Respondent.

19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Kimberly Kirchmeyer ("Complainant") is the Executive Director of the Medical  
23 Board of California. She brought this action solely in her official capacity and is represented in  
24 this matter by Kamala D. Harris, Attorney General of the State of California, by Vladimir  
25 Shalkevich, Deputy Attorney General.

26 2. Respondent MARK CHRISTOPHER DOWLING, M.D. ("Respondent") is  
27 represented in this proceeding by attorney Dominique A. Pollara, Esq., whose address is 3600  
28 American River Drive Suite 160, Sacramento, CA 95864.

3. On or about December 7, 1994, the Medical Board of California issued Physician's and Surgeon's Certificate No. G80355 to MARK CHRISTOPHER DOWLING, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 02-2012-228401 and will expire on August 31, 2016, unless renewed.

## JURISDICTION

4. An Interim Order By Administrative Law Judge Pursuant to Petition For Interim Suspension Order in the Case No. 02-2012-228401 was issued on or about October 10, 2014.

5. Accusation No. 02-2012-228401 was subsequently filed before the Medical Board of California (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on November 7, 2014. Respondent timely filed his Notice of Defense contesting the Accusation.

6. A copy of Accusation No. 02-2012-228401, which includes a copy of the Interim Order By Administrative Law Judge Pursuant to Petition For Interim Suspension Order in the Case No. 02-2012-228401, is attached as exhibit A and incorporated herein by reference.

## ADVISEMENT AND WAIVERS

7. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 02-2012-228401. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

8. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

9. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

10. Respondent understands and agrees that the charges and allegations in Accusation No. 02-2012-228401, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

11. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest those charges.

12. Respondent agrees that if he ever petitions for early termination or modification of probation, or if the Board ever petitions for revocation of probation, all of the charges and allegations contained in Accusation No. 02-2012-228401 shall be deemed true, correct and fully admitted by respondent for purposes of that proceeding or any other licensing proceeding involving respondent in the State of California.

13. Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

## RESERVATION

14. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Medical Board of California or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

## CONTINGENCY

15. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the

1 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek  
2 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails  
3 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary  
4 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal  
5 action between the parties, and the Board shall not be disqualified from further action by having  
6 considered this matter.

7 16. The parties understand and agree that Portable Document Format (PDF) and facsimile  
8 copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format  
9 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

10 17. In consideration of the foregoing admissions and stipulations, the parties agree that  
11 the Board may, without further notice or formal proceeding, issue and enter the following  
12 Disciplinary Order:

13 **DISCIPLINARY ORDER**

14 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G80355 issued  
15 to Respondent MARK CHRISTOPHER DOWLING, M.D. (Respondent) is revoked. However,  
16 the revocation is stayed and Respondent is placed on probation for five (5) years on the following  
17 terms and conditions.

18 1. ONGOING COMPLIANCE WITH INTERIM ORDER BY ADMINISTRATIVE  
19 LAW JUDGE. In addition to the conditions of probation enumerated below, Respondent shall  
20 comply with conditions A through E of the INTERIM ORDER BY ADMINISTRATIVE LAW  
21 JUDGE PURSUANT TO PETITION FOR INTERIM SUSPENSION ORDER in the Case No.  
22 02-2012-228401, issued on October 10, 2014, which is a part of Exhibit A attached hereto and  
23 which is incorporated herein by reference.

24 2. ALCOHOL - ABSTAIN FROM USE. Respondent shall abstain completely from the  
25 use of products or beverages containing alcohol.

26 If Respondent has a confirmed positive biological fluid test for alcohol, Respondent shall  
27 receive a notification from the Board or its designee to immediately cease the practice of  
28 medicine. The Respondent shall not resume the practice of medicine until final decision on an

1 accusation and/or a petition to revoke probation. An accusation and/or petition to revoke  
2 probation shall be filed by the Board within 15 days of the notification to cease practice. If the  
3 Respondent requests a hearing on the accusation and/or petition to revoke probation, the Board  
4 shall provide the Respondent with a hearing within 30 days of the request, unless the Respondent  
5 stipulates to a later hearing. A decision shall be received from the Administrative Law Judge or  
6 the Board within 15 days unless good cause can be shown for the delay. The cessation of practice  
7 shall not apply to the reduction of the probationary time period.

8 If the Board does not file an accusation or petition to revoke probation within 15 days of the  
9 issuance of the notification to cease practice or does not provide Respondent with a hearing  
10 within 30 days of a such a request, the notification of cease practice shall be dissolved.

11 3. BIOLOGICAL FLUID TESTING. Respondent shall immediately submit to  
12 biological fluid testing, at Respondent's expense, upon request of the Board or its designee.  
13 "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair  
14 follicle testing, or similar drug screening approved by the Board or its designee. Prior to  
15 practicing medicine, Respondent shall contract with a laboratory or service approved in advance  
16 by the Board or its designee that will conduct random, unannounced, observed, biological fluid  
17 testing. The contract shall require results of the tests to be transmitted by the laboratory or  
18 service directly to the Board or its designee within four hours of the results becoming available.  
19 Respondent shall maintain this laboratory or service contract during the period of probation.

20 A certified copy of any laboratory test result may be received in evidence in any  
21 proceedings between the Board and Respondent.

22 If Respondent fails to cooperate in a random biological fluid testing program within the  
23 specified time frame, Respondent shall receive a notification from the Board or its designee to  
24 immediately cease the practice of medicine. The Respondent shall not resume the practice of  
25 medicine until final decision on an accusation and/or a petition to revoke probation. An  
26 accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the  
27 notification to cease practice. If the Respondent requests a hearing on the accusation and/or  
28 petition to revoke probation, the Board shall provide the Respondent with a hearing within 30

1 days of the request, unless the Respondent stipulates to a later hearing. A decision shall be  
2 received from the Administrative Law Judge or the Board within 15 days unless good cause can  
3 be shown for the delay. The cessation of practice shall not apply to the reduction of the  
4 probationary time period.

5 If the Board does not file an accusation or petition to revoke probation within 15 days of the  
6 issuance of the notification to cease practice or does not provide Respondent with a hearing  
7 within 30 days of a such a request, the notification of cease practice shall be dissolved.

8 4. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of  
9 the effective date of this Decision, Respondent shall enroll in a professionalism program, that  
10 meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.  
11 Respondent shall participate in and successfully complete that program. Respondent shall  
12 provide any information and documents that the program may deem pertinent. Respondent shall  
13 successfully complete the classroom component of the program not later than six (6) months after  
14 Respondent's initial enrollment, and the longitudinal component of the program not later than the  
15 time specified by the program, but no later than one (1) year after attending the classroom  
16 component. The professionalism program shall be at Respondent's expense and shall be in  
17 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

18 A professionalism program taken after the acts that gave rise to the charges in the  
19 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board  
20 or its designee, be accepted towards the fulfillment of this condition if the program would have  
21 been approved by the Board or its designee had the program been taken after the effective date of  
22 this Decision.

23 Respondent shall submit a certification of successful completion to the Board or its  
24 designee not later than 15 calendar days after successfully completing the program or not later  
25 than 15 calendar days after the effective date of the Decision, whichever is later.

26 5. PSYCHIATRIC EVALUATION. Within 30 calendar days of the effective date of  
27 this Decision, and on whatever periodic basis thereafter may be required by the Board or its  
28 designee, Respondent shall undergo and complete a psychiatric evaluation (and psychological

1 testing, if deemed necessary) by a Board-appointed board certified psychiatrist, who shall  
2 consider any information provided by the Board or designee and any other information the  
3 psychiatrist deems relevant, and shall furnish a written evaluation report to the Board or its  
4 designee. Psychiatric evaluations conducted prior to the effective date of the Decision shall not  
5 be accepted towards the fulfillment of this requirement. Respondent shall pay the cost of all  
6 psychiatric evaluations and psychological testing.

7 Respondent shall comply with all restrictions or conditions recommended by the evaluating  
8 psychiatrist within 15 calendar days after being notified by the Board or its designee.

9 6. PSYCHOTHERAPY. Within 60 calendar days of the effective date of this Decision,  
10 Respondent shall submit to the Board or its designee for prior approval the name and  
11 qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who  
12 has a doctoral degree in psychology and at least five years of postgraduate experience in the  
13 diagnosis and treatment of emotional and mental disorders. Upon approval, Respondent shall  
14 undergo and continue psychotherapy treatment, including any modifications to the frequency of  
15 psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

16 The psychotherapist shall consider any information provided by the Board or its designee  
17 and any other information the psychotherapist deems relevant and shall furnish a written  
18 evaluation report to the Board or its designee. Respondent shall cooperate in providing the  
19 psychotherapist any information and documents that the psychotherapist may deem pertinent.

20 Respondent shall have the treating psychotherapist submit quarterly status reports to the  
21 Board or its designee. The Board or its designee may require Respondent to undergo psychiatric  
22 evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of  
23 probation, Respondent is found to be mentally unfit to resume the practice of medicine without  
24 restrictions, the Board shall retain continuing jurisdiction over Respondent's license and the  
25 period of probation shall be extended until the Board determines that Respondent is mentally fit  
26 to resume the practice of medicine without restrictions.

27 Respondent shall pay the cost of all psychotherapy and psychiatric evaluations.

28 7. MEDICAL EVALUATION AND TREATMENT. Within 30 calendar days of the



1 effective date of this Decision, and on a periodic basis thereafter as may be required by the Board  
2 or its designee, Respondent shall undergo a medical evaluation by a Board-appointed physician  
3 who shall consider any information provided by the Board or designee and any other information  
4 the evaluating physician deems relevant and shall furnish a medical report to the Board or its  
5 designee. Respondent shall provide the evaluating physician any information and documentation  
6 that the evaluating physician may deem pertinent.

7       Following the evaluation, Respondent shall comply with all restrictions or conditions  
8 recommended by the evaluating physician within 15 calendar days after being notified by the  
9 Board or its designee. If Respondent is required by the Board or its designee to undergo medical  
10 treatment, Respondent shall within 30 calendar days of the requirement notice, submit to the  
11 Board or its designee for prior approval the name and qualifications of a California licensed  
12 treating physician of Respondent's choice. Upon approval of the treating physician, Respondent  
13 shall within 15 calendar days undertake medical treatment and shall continue such treatment until  
14 further notice from the Board or its designee.

15       The treating physician shall consider any information provided by the Board or its designee  
16 or any other information the treating physician may deem pertinent prior to commencement of  
17 treatment. Respondent shall have the treating physician submit quarterly reports to the Board or  
18 its designee indicating whether or not the Respondent is capable of practicing medicine safely.  
19 Respondent shall provide the Board or its designee with any and all medical records pertaining to  
20 treatment, the Board or its designee deems necessary.

21       If, prior to the completion of probation, Respondent is found to be physically incapable of  
22 resuming the practice of medicine without restrictions, the Board shall retain continuing  
23 jurisdiction over Respondent's license and the period of probation shall be extended until the  
24 Board determines that Respondent is physically capable of resuming the practice of medicine  
25 without restrictions. Respondent shall pay the cost of the medical evaluation(s) and treatment.

26       8.   MONITORING - PRACTICE. Respondent is not currently engaged in the practice of  
27 medicine. Installment of a practice monitor as ordered herein shall be a condition precedent to  
28 Respondent's return to practice of medicine. Prior to engaging in the practice of medicine.

1 Respondent shall submit to the Board or its designee for prior approval as a practice monitor(s),  
2 the name and qualifications of one or more licensed physicians and surgeons whose licenses are  
3 valid and in good standing, and who are preferably American Board of Medical Specialties  
4 (ABMS) certified. A monitor shall have no prior or current business or personal relationship with  
5 Respondent, or other relationship that could reasonably be expected to compromise the ability of  
6 the monitor to render fair and unbiased reports to the Board, including but not limited to any form  
7 of bartering, shall be in Respondent's field of practice, and must agree to serve as Respondent's  
8 monitor. Respondent shall pay all monitoring costs.

9 The Board or its designee shall provide the approved monitor with copies of the Decision(s)  
10 and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the  
11 Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed  
12 statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role  
13 of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees  
14 with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the  
15 signed statement for approval by the Board or its designee.

16 On the date of Respondent's return to the practice of medicine, and continuing throughout  
17 probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall  
18 make all records available for immediate inspection and copying on the premises by the monitor  
19 at all times during business hours and shall retain the records for the entire term of probation.  
20 Respondent shall not practice medicine until a monitor is approved to provide monitoring  
21 responsibility.

22 The monitor(s) shall submit a quarterly written report to the Board or its designee which  
23 includes an evaluation of Respondent's performance, indicating whether Respondent's practices  
24 are within the standards of practice of medicine and whether Respondent is practicing medicine  
25 safely. It shall be the sole responsibility of Respondent to ensure that the monitor submits the  
26 quarterly written reports to the Board or its designee within 10 calendar days after the end of the  
27 preceding quarter.

28 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of

1 such resignation or unavailability, submit to the Board or its designee, for prior approval, the  
2 name and qualifications of a replacement monitor who will be assuming that responsibility within  
3 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60  
4 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a  
5 notification from the Board or its designee to cease the practice of medicine within three (3)  
6 calendar days after being so notified Respondent shall cease the practice of medicine until a  
7 replacement monitor is approved and assumes monitoring responsibility.

8 9. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the  
9 Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the  
10 Chief Executive Officer at every hospital where privileges or membership are extended to  
11 Respondent, at any other facility where Respondent engages in the practice of medicine,  
12 including all physician and locum tenens registries or other similar agencies, and to the Chief  
13 Executive Officer at every insurance carrier which extends malpractice insurance coverage to  
14 Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15  
15 calendar days.

16 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

17 10. SUPERVISION OF PHYSICIAN ASSISTANTS. During probation, Respondent is  
18 prohibited from supervising physician assistants.

19 11. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules  
20 governing the practice of medicine in California and remain in full compliance with any court  
21 ordered criminal probation, payments, and other orders.

22 12. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations  
23 under penalty of perjury on forms provided by the Board, stating whether there has been  
24 compliance with all the conditions of probation.

25 Respondent shall submit quarterly declarations not later than 10 calendar days after the end  
26 of the preceding quarter.

27 13. GENERAL PROBATION REQUIREMENTS.

28 Compliance with Probation Unit

1 Respondent shall comply with the Board's probation unit and all terms and conditions of  
2 this Decision.

3 Address Changes

4 Respondent shall, at all times, keep the Board informed of Respondent's business and  
5 residence addresses, email address (if available), and telephone number. Changes of such  
6 addresses shall be immediately communicated in writing to the Board or its designee. Under no  
7 circumstances shall a post office box serve as an address of record, except as allowed by Business  
8 and Professions Code section 2021(b).

9 Place of Practice

10 Respondent shall not engage in the practice of medicine in Respondent's or patient's place  
11 of residence, unless the patient resides in a skilled nursing facility or other similar licensed  
12 facility.

13 License Renewal

14 Respondent shall maintain a current and renewed California physician's and surgeon's  
15 license.

16 Travel or Residence Outside California

17 Respondent shall immediately inform the Board or its designee, in writing, of travel to any  
18 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty  
19 (30) calendar days.

20 In the event Respondent should leave the State of California to reside or to practice  
21 Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of  
22 departure and return.

23 14. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be  
24 available in person upon request for interviews either at Respondent's place of business or at the  
25 probation unit office, with or without prior notice throughout the term of probation.

26 15. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or  
27 its designee in writing within 15 calendar days of any periods of non-practice lasting more than  
28 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is

1 defined as any period of time Respondent is not practicing medicine in California as defined in  
2 Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month  
3 in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All  
4 time spent in an intensive training program which has been approved by the Board or its designee  
5 shall not be considered non-practice. Practicing medicine in another state of the United States or  
6 Federal jurisdiction while on probation with the medical licensing authority of that state or  
7 jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall  
8 not be considered as a period of non-practice.

9 In the event Respondent's period of non-practice while on probation exceeds 18 calendar  
10 months, Respondent shall successfully complete a clinical training program that meets the criteria  
11 of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and  
12 Disciplinary Guidelines" prior to resuming the practice of medicine.

13 Respondent's period of non-practice while on probation shall not exceed two (2) years.

14 Periods of non-practice will not apply to the reduction of the probationary term.

15 Periods of non-practice will relieve Respondent of the responsibility to comply with the  
16 probationary terms and conditions with the exception of this condition and the following terms  
17 and conditions of probation: Obey All Laws; and General Probation Requirements.

18 16. COMPLETION OF PROBATION. Respondent shall comply with all financial  
19 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the  
20 completion of probation. Upon successful completion of probation, Respondent's certificate shall  
21 be fully restored.

22 17. VIOLATION OF PROBATION. Failure to fully comply with any term or condition  
23 of probation is a violation of probation. If Respondent violates probation in any respect, the  
24 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and  
25 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation,  
26 or an Interim Suspension Order is filed against Respondent during probation, the Board shall have  
27 continuing jurisdiction until the matter is final, and the period of probation shall be extended until  
28 the matter is final.


1       18. LICENSE SURRENDER. Following the effective date of this Decision, if  
2 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy  
3 the terms and conditions of probation, Respondent may request to surrender his or her license.  
4 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in  
5 determining whether or not to grant the request, or to take any other action deemed appropriate  
6 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent  
7 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its  
8 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject  
9 to the terms and conditions of probation. If Respondent re-applies for a medical license, the  
10 application shall be treated as a petition for reinstatement of a revoked certificate.

11       19. PROBATION MONITORING COSTS. Respondent shall pay the costs associated  
12 with probation monitoring each and every year of probation, as designated by the Board, which  
13 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of  
14 California and delivered to the Board or its designee no later than January 31 of each calendar  
15 year.

16                                   ACCEPTANCE

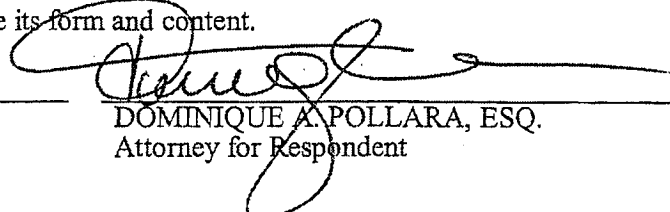
17       I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
18 discussed it with my attorney, Dominique A. Pollara, Esq. I understand the stipulation and the  
19 effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated  
20 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be  
21 bound by the Decision and Order of the Medical Board of California.

22  
23       DATED: 2/11/15

24                                     
25                                   MARK CHRISTOPHER DOWLING, M.D.  
26                                   Respondent  
27  
28

1 I have read and fully discussed with Respondent MARK CHRISTOPHER DOWLING,  
2 M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and  
3 Disciplinary Order. I approve its form and content.

4 DATED: 2/11/15

  
DOMINIQUE A. POLLARA, ESQ.  
Attorney for Respondent

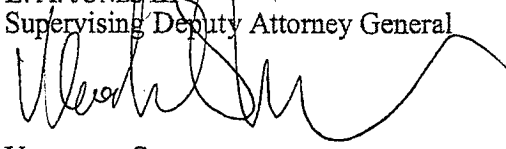
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7  
8 ENDORSEMENT

9 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
10 submitted for consideration by the Medical Board of California.

11 Dated: 2/13/15

Respectfully submitted,

12 KAMALA D. HARRIS  
13 Attorney General of California  
14 E. A. JONES III  
15 Supervising Deputy Attorney General

  
16 VLADIMIR SHALKEVICH  
17 Deputy Attorney General  
18 Attorneys for Complainant

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**Exhibit A**

**Accusation No. 02-2012-228401**



1 KAMALA D. HARRIS  
Attorney General of California  
2 E. A. JONES III  
Supervising Deputy Attorney General  
3 VLADIMIR SHALKEVICH  
Deputy Attorney General  
4 State Bar No. 173955  
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Facsimile: (213) 897-9395  
7 *Attorneys for Complainant*

FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO November 7, 2014  
BY: J. KELLY ANALYST

8 BEFORE THE  
9 MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
10 STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 02-2012-228401

12 **MARK CHRISTOPHER DOWLING, M.D.**  
13 **1800 N. California St.**  
**Stockton, California 95204**

ACCUSATION

14 **Physician's and Surgeon's Certificate No.**  
15 **G80355**

16 Respondent.

17 Complainant alleges:

18 PARTIES

19 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official  
20 capacity as the Executive Director of the Medical Board of California, Department of Consumer  
21 Affairs.

22 2. On or about December 7, 1994, the Medical Board of California issued Physician's  
23 and Surgeon's Certificate Number G80355 to MARK CHRISTOPHER DOWLING, M.D.  
24 (respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times  
25 relevant to the charges brought herein and will expire on August 31, 2016, unless renewed.

26 ///

27 ///

JURISDICTION

3. This Accusation is brought before the Medical Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

5. Section 820 of the Code states:

"Whenever it appears that any person holding a license, certificate or permit under this division or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licentiate and may be received as direct evidence in proceedings conducted pursuant to Section 822."

6. Code section 822 states:

"If a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods:

"(a) Revoking the licentiate's certificate or license.

"(b) Suspending the licentiate's right to practice.

"(c) Placing the licentiate on probation.

"(d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper.

"The licensing section shall not reinstate a revoked or suspended certificate or license until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety the person's

1 right to practice his or her profession may be safely reinstated."

2 7. Section 2239 of the Code states:

3 "(a) The use or prescribing for or administering to himself or herself, of any controlled  
4 substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic  
5 beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to  
6 any other person or to the public, or to the extent that such use impairs the ability of the licensee  
7 to practice medicine safely or more than one misdemeanor or any felony involving the use,  
8 consumption, or self-administration of any of the substances referred to in this section, or any  
9 combination thereof, constitutes unprofessional conduct. The record of the conviction is  
10 conclusive evidence of such unprofessional conduct.

11 "(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is  
12 deemed to be a conviction within the meaning of this section. The Division of Medical Quality<sup>1</sup>  
13 may order discipline of the licensee in accordance with Section 2227 or the Division of Licensing  
14 may order the denial of the license when the time for appeal has elapsed or the judgment of  
15 conviction has been affirmed on appeal or when an order granting probation is made suspending  
16 imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4  
17 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of  
18 not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint,  
19 information, or indictment."

#### 20 FIRST CAUSE FOR DISCIPLINE

##### 21 (Illness Affecting Competency)

22 8. Respondent is subject to disciplinary action under sections 820 and 822 in that  
23 respondent suffers from a mental or physical condition affecting his ability to practice medicine  
24 safely. The circumstances are as follows:

25 \_\_\_\_\_  
26 <sup>1</sup> Business and Professions Code section 2002, as amended and effective January 1, 2008,  
27 provides that, unless otherwise expressly provided, the term "board" as used in the State Medical  
28 Practice Act (Bus. & Prof. Code § 2000, et seq.) means the Medical Board of California, and  
references to the Division of Medical Quality and Division of Licensing in the Act or any other  
provision of law shall be deemed to refer to the Board.

1           9.     On or about August 2, 2014, pursuant to Business and Professions Code section 820,  
2 Respondent voluntarily submitted to an examination by a board-certified psychiatrist who was  
3 retained by the Medical Board of California to conduct a psychiatric evaluation of Respondent.  
4 This evaluation was performed after the Medical Board became aware of Respondent's two  
5 alcohol related driving arrests within two years of each other. The Board-appointed evaluator  
6 concluded that respondent was unable to practice medicine safely unless he is subjected to  
7 monitoring, evaluation and treatment.

8           10.    On or about October 10, 2014, an Administrative Law Judge of the Medical Hearing  
9 Panel issued an Interim Order that suspended Respondent's license, but stayed the suspension on  
10 the condition that Respondent undergo monitoring, evaluation and treatment. A true and correct  
11 copy of said Interim Order is attached hereto as **Exhibit A** and is incorporated herein by  
12 reference.

#### 13                               SECOND CAUSE FOR DISCIPLINE

14               (Use of Medications and/or Alcohol in a Manner Dangerous to Self or Others)

15           11.    Respondent is subject to disciplinary action under Code section 2239 in that  
16 respondent used controlled substance or dangerous drugs specified in Code Section 4022, or  
17 alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the  
18 respondent, or to any other person or to the public, or to the extent that such use impairs the  
19 ability of the licensee to practice medicine safely. The circumstances are as follows:

20           12.    Allegations of paragraphs 9 and 10, together with Exhibit A, are incorporated herein  
21 by reference.

#### 22                               November 20, 2012, Motor Vehicle Accident Arrest

23           13.    On December 13, 2012, a criminal complaint asserting three misdemeanor charges  
24 against Respondent was filed in Tuolumne County Superior Court case number CRM40088. The  
25 charges are as follows: 1) alleged violation of Vehicle Code section 23153, subdivision (a),  
26 driving under the influence of alcohol, with enhancing allegations that Respondent refused or  
27 willfully failed to complete a chemical test at officer's request in violation of Vehicle Code  
28 section 23577, as well as an enhancement for having suffered a prior alcohol related conviction;

1 2) alleged violation of Vehicle Code section 23153, subdivision (b), driving with blood alcohol  
2 level exceeding .08%, with the same enhancing allegations, as well as an allegation that  
3 Respondent's blood alcohol level exceeded .15%; 3) alleged violation of Health and Safety Code  
4 section 11375, subdivision (b)(2), for possession of a controlled substance.

5 14. Respondent has pled not guilty to these charges, and the criminal matter is pending at  
6 this time.

7 15. The circumstances that led to the filing of charges against respondent are as follows:  
8 At approximately 9:16 a.m., on the morning of Tuesday, November 20, 2012, Respondent was  
9 involved in a solo vehicle traffic accident while travelling southbound near 21160 Bald Mountain  
10 Road in Sonora, California. Respondent was on his way to work at the time.

11 16. Prior to the accident, respondent's vehicle was observed swerving into the center of  
12 the roadway. Respondent then accelerated around a curve, lost control of his vehicle, and  
13 collided with a tree. Following the accident respondent appeared incoherent and a witness, who  
14 believed that respondent possibly needed medical attention, drove him home. Thereafter, the  
15 witness returned to the scene of the accident and informed responding California Highway Patrol  
16 (CHP) Officers, of Respondent's whereabouts and condition.

17 17. CHP officers arrived at Respondent's home and discovered that respondent displayed  
18 signs of alcohol intoxication. They also noted numerous medication bottles at his home.

19 18. Respondent later stated that he felt he was not intoxicated when he was driven home  
20 after the accident, but that he had consumed a half a bottle of vodka after he got home but before  
21 the police arrived. Respondent refused to take part in field sobriety tests. Respondent was  
22 arrested on suspicion of driving while impaired. Respondent refused to cooperate with a medical  
23 evaluation following his arrest. Respondent's blood, which was drawn following his arrest,  
24 contained 0.22% alcohol. At the time of booking at the Tuolumne county jail he was searched,  
25 and a 0.5 mg tablet later identified as clonazepam,<sup>2</sup> was found in his pocket.

26 <sup>2</sup> Clonazepam is a benzodiazepine with muscle relaxant, amnestic, sedative, and hypnotic  
27 properties. It is a Schedule IV controlled substance under Health and Safety Code section 11057,  
28 subdivision (d)(7), and is a dangerous drug pursuant to Business and Professions Code section  
4022. At the time, Respondent had a valid prescription for this medication.

1 May 31, 2010 Arrest and Conviction

2 19. On or about October 25, 2010, in the Monterey County Superior Court case number  
3 MS286915A, Respondent was convicted, pursuant to a plea of no contest, of a violation of  
4 Vehicle Code section 23103.5, alcohol-related reckless driving. Respondent was sentenced to  
5 confinement of one day, with credit for one day served, fined and placed on probation for a period  
6 of three years. His probationary conditions included a requirement to complete a county  
7 approved 12 hour wet reckless program.

8 20. The circumstances of the October 25, 2010, conviction are as follows: On May 31,  
9 2010, at approximately 1:00 a.m., CHP Officers observed Respondent driving in the #2 lane of  
10 State Route 1 in Monterey, California, at an excessive rate of speed. Respondent had difficulty  
11 driving within his lane, and weaved out of his lane and into the lane next to him, as well as the  
12 shoulder of the roadway, several times. They stopped Respondent in a parking lot of a local  
13 business. When the officers approached Respondent, he stated that he was an unarmed, off-duty  
14 doctor and that he was ok to drive. He admitted that he had consumed four alcoholic beverages  
15 earlier in the evening. There were two passengers in the vehicle, one of whom was unrestrained  
16 and laying in the back seat.

17 21. Respondent failed to perform field sobriety tests as instructed and demonstrated by  
18 the CHP Officers. After the third test, however, Respondent proclaimed that he had performed  
19 the FST's to perfection and did not want to perform any more tests, due to his opinion that his  
20 blood alcohol level was .04%. Respondent was arrested and his blood was drawn an hour after  
21 the stop, and analyzed. Respondent's blood alcohol level was .09% at the time it was drawn.

22  
23 PRAYER

24 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
25 and that following the hearing, the Medical Board of California issue a decision:

26 1. Revoking or suspending Physician's and Surgeon's Certificate Number G80355,  
27 issued to MARK CHRISTOPHER DOWLING, M.D.;

1           2.     Revoking, suspending or denying approval of MARK CHRISTOPHER DOWLING,  
2 M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;

3           3.     Ordering MARK CHRISTOPHER DOWLING, M.D. to pay the Medical Board of  
4 California the costs of probation monitoring, if placed on probation,; and

5           4.     Taking such other and further action as deemed necessary and proper.

6 DATED:   November 7, 2014

  
KIMBERLY KIRCHMEYER  
Executive Director  
Medical Board of California  
Department of Consumer Affairs  
State of California  
*Complainant*

11 LA2013609558

EXHIBIT A



BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

KIMBERLY KIRCHMEYER,  
Executive Director,  
Medical Board of California,

Petitioner,

v.

MARK C DOWLING, M.D.  
Physician's and Surgeon's  
Certificate No. G80355

Respondent.

Case No. 02-2012-228401

OAH No. 2014100092

[PROPOSED] INTERIM ORDER BY  
ADMINISTRATIVE LAW JUDGE  
PURSUANT TO PETITION FOR  
INTERIM SUSPENSION ORDER

(Government Code section 11529)

The Petition of Kimberly Kirchmeyer, Executive Director of the Medical Board of California, seeking an ex parte interim order suspending Physician and Surgeon's Certificate No. G80355, pursuant to Government Code section 11529, was heard by Coren D. Wong, Administrative Law Judge, Office of Administrative Hearings, on October 10, 2014, in Sacramento, California.

Vladimir Shalkevich, Deputy Attorney General, Health Quality Enforcement Section, represented Kimberly Kirchmeyer (petitioner).

Mark C. Dowling was present and represented by Dominique Pollara,

Based on the Petition for Interim Suspension Order in Case No. 02-2012-228401 and the acknowledgments in the "Stipulation for Interim Order by Administrative Law Judge Pursuant to Ex Parte Petition for Interim Suspension Order" the requirements for the issuance of an interim suspension order set forth in Government Code section 11529, subdivisions (a) and (e), have been met. Accordingly,

GOOD CAUSE APPEARING, IT IS HEREBY ORDERED that:

1. The Ex Parte Petition for Interim Suspension Order is granted.
2. Physician and Surgeon's Certificate No. A32530, issued to Respondent Mark C. Dowling, M.D. shall be suspended, but the suspension shall be stayed subject to the following conditions:

A. Within five days of receipt of this Order, Respondent shall enroll in an outpatient alcohol rehabilitation program designed for professionals, and provide written proof of enrollment to the Board or its designee. He shall have a thorough intake substance use evaluation for the program, and immediately thereafter he shall attend this program on an ongoing basis, submit to any substance testing required in the sole discretion of the program and abide by all program recommendations. Selection of the program shall be subject to prior approval of the Medical Board of California or its designee.

B. Within five days of receipt of this Order Respondent shall attend ongoing psychiatric treatment and counseling by a medical provider approved by the Medical Board of California or its designee. Respondent shall execute authorizations that would enable the Medical Board of California or its designee to obtain information confirming attendance and progress.

C. Within five days of receipt of this Order, Respondent's psychotropic medication regimen shall be carefully re-assessed, with due regard given to the opinion of the Medical Board's expert, who stated: "The combination of Wellbutrin and Lexapro, both in high doses, may not be optimal for him, and could increase his anxiety and insomnia, which in turn, might contribute to his substance abuse. The additional sedative-hypnotic agents he is taking may be contributing to his intermittent episodes of confusion. Consideration should be given to use of a more calming antidepressant which might help with his insomnia, in addition to treating his chronic anxiety and dysthymia, and would potentially avert the need for additional sedative/hypnotic medications." Respondent shall execute authorizations that would enable the Medical Board of California or its designee to obtain information confirming reassessment and progress.

D. Within five days of receipt of this Order, Respondent shall discuss with his current treating psychiatrist, discontinuation of Zolpidem (Ambien), to which he had a probable adverse reaction in the past, and may have contributed to his episodic confusional symptoms. Respondent shall execute authorizations that would enable the Medical Board of California or its designee to obtain information confirming reassessment and progress.

E. Within five days of receipt of this Order, Respondent shall be reassessed by a board certified neurologist, previously approved by the Board or its designee, regarding his intermittent episodes of disorientation and abnormal speech. Respondent shall execute authorizations that would enable the Medical Board of California or its designee to obtain information confirming that this assessment took place, and results thereof.

3. This order shall remain in place pending a hearing on an Accusation which is to be filed and served pursuant to Government Code sections 11503 and 11505 within ~~15~~<sup>30</sup> days of the date of this Order. This order shall be dissolved if the Accusation is not served and filed by that date. *asp*

4. Upon service of the Accusation Respondent shall have, in addition to the rights granted by Government Code section 11529, all of the rights and privileges available as specified in the Administrative Procedure Act. If Respondent requests a hearing on the charges, the Division shall provide Respondent with a hearing within ~~90~~<sup>30</sup> days of the request, ~~unless Respondent stipulates to a later hearing.~~ *asp* The Board shall issue a decision within 15 days of the date the proposed decision is received from the administrative law judge, or the Board shall nullify the interim order previously issued, unless good cause can be shown by the Board for a delay. *W*

Dated: 10/10/14

  
Administrative Law Judge